

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 272 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

Versus

Appearance:

MS VASUBEN P SHAH for Petitioner
UNSERVED for Respondent No. 1
SERVED for Respondent No. 2
PARTY-IN-PERSON for Respondent No. 3

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 25/09/96

ORAL JUDGEMENT

The appellants, who are the original defendants

No.1 to 5, have preferred this Appeal From Order against the judgment and order dated August 20,1981 passed by the learned District Judge, Surat, allowing the appeal, being

Civil Misc.Appeal No.24/81 of the plaintiff-respondents and setting aside the judgment dated January 27,1981 passed by the learned 4th Jt.CivilJudge (S.D.), Surat. The trial Court held that it had no jurisdiction to try the suit and hence the plaint be returned to the plaintiffs to present it to the proper Court. The said order regarding jurisdiction of the trial Court was quashed by the appellate Court which is challenged in the present Appeal From Order.

Miss Kalpana Brahmbhatt, learned Advocate appearing for the appellants, has not been able to satisfy this Court as to how the second appeal against the impugned order rendered in Civil Misc.Appeal would be maintainable. In the facts of the case, therefore, the present Appeal From Order against the order rendered in Civil Misc.Appeal by the District Court is not maintainable in law.

Miss Brahmbhatt then argued that the learned Judge of the lower Appellate Court, ignored the definition of "court" in sub-section (4) of section 2 of the Bombay Public Trusts Act (hereinafter referred to as "the said Act").As per sub-section (4) of sec.2 of the said Act,"court" means, in Greater Bombay, the City Civil Court and elsewhere the District Court. There is nothing either in the judgment of the trial Court or of the appellate Court that this point was raised before those Courts, nor Miss Brahmbhatt is in a position to state if the powers of the District Court were delegated to the Court of Civil Judge (Senior Division) or otherwise. The City Civil Court, in the Greater Bombay and Ahmedabad, and elsewhere the District Court has jurisdiction to entertain applications or suits relating to any public trust registered under the Bombay Public Trusts Act,within the local limits of which the trustee has an office for the administration of the Trust or the trust property is situated, as the case may be. This is what is defined in section 2(4) of the said Act. Section 56D of the said Act,however, provides that the Court shall mean any civil Court of competent jurisdiction in the State of Gujarat. Therefore, this jurisdiction of the court should be held governed by the general definition of "court" contained in sec.2(4) of the said Act. It appears from the judgments of both the Courts below that the point was not examined from this angle, nor it appears to have been placed before them. Under the circumstances, it would be open for the appellants to urge the point afresh with regard to jurisdiction of the

Court and the maintainability of the suit.

The learned Judge of the lower Appellate Court has rightly held that the issues involved being mixed questions of fact and law cannot be determined as preliminary issues. The learned District Judge has made it clear in para 10 of the impugned order that the appeal was not decided on merits. What appears to have been concentrated by the appellate Court is the jurisdiction of the Court as regards maintainability of the suit only. This being a mixed question of fact and law, it could not have been decided by way of preliminary issue. Apart maintainability of the present Appeal From Order, there is no merit in the appeal.

In the result, the Appeal From Order fails and is dismissed.
